

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

OCTOBER TERM, 1905.

No. 1614.

396

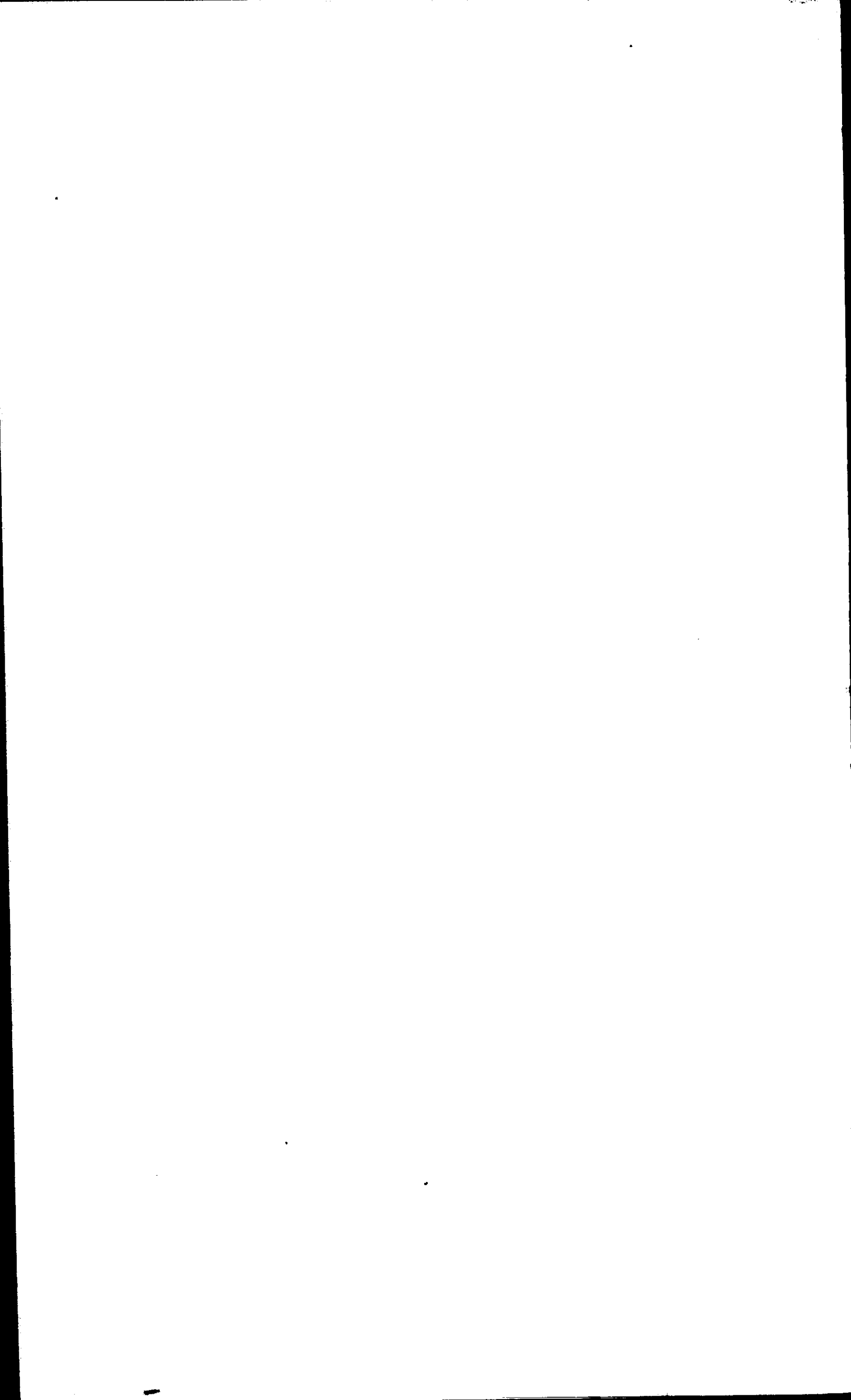
JOHN HENRY LANE, APPELLANT,

vs.

EMMA EUDORA LANE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED SEPTEMBER 30, 1905.



COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1905.

No. 1614.

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In the Court of Appeals of the District of Columbia

JOHN HENRY LANE, Appellant, }
vs. } No. 1614.
EMMA EUDORA LANE.

a Supreme Court of the District of Columbia.

EMMA EUDORA LANE, Petitioner, }
vs. } In Equity. No. 25065.
JOHN HENRY LANE, Respondent.

UNITED STATES OF AMERICA, }
District of Columbia, } ss :

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 *Petition.*

Filed December 2, 1904.

In the Supreme Court of the District of Columbia.

EMMA EUDORA LANE, Petitioner, }
vs. } In Equity. No. 25065.
JOHN HENRY LANE, Respondent.

To the supreme court of the District of Columbia, holding an equity court:

The petition of Emma Eudora Lane, respectfully represents to the court as follows:

First. That the petitioner is a white citizen of the United States, and a resident of the District of Columbia and has been a resident thereof for more than two years prior to the filing of this petition.

Second. The respondent is a citizen of the United States and a resident of the District of Columbia, residing at No. 1410 Penn. Ave., N. W., in the city of Washington, District of Columbia.

Third. The petitioner under her maiden name of Emma Eudora

Wilkinson was duly and lawfully married to the respondent, John Henry Lane, on the twenty-third day of August A. D. 1883, by the Rev. Edward F. Miles assistant rector of St. George's church New York city in presence of witnesses, and according to the rites of the Protestant Episcopal church in the United States of America, and in conformity with the laws of the State of New York, original certificate thereof is filed herewith and made a part hereof
 2 marked Exhibit "E. E. W.," and lived with the respondent, in the matrimonial state, in the District of Columbia thereafter.

Fourth. That there have been no children born of said marriage.

Fifth. The petitioner, painfully reluctant to place upon the records of this court, any accusations, whatsoever, against the respondent, her husband, and wholly unwilling to make further complaint against him than compliance with statutory requirements render, absolutely, indispensable to the necessary purpose of the petition, says that she has during their MARRIED LIFE, as she believes and avers, CONDUCTED HERSELF, to the best of her knowledge and ability, as a FAITHFUL WIFE to the respondent.

Sixth. That the respondent and petitioner went to live at No. 1309 Ninth street, N. W., in said city of Washington, D. C., until the summer of 1895 when the respondent by a systematic course of cruelty, humiliation and abuse of the petitioner, theretofore begun and continued incessantly by the respondent, until the petitioner was compelled to part from and leave the respondent, which was the result of CONTINUING CRUELTY and INHUMANITY, entirely WITHOUT PROVOCATION on her part which acts were followed by VITUPERATION and THREATS.

That the petitioner went to live with her brother in the city of Baltimore, and after an absence of about six weeks, the respondent learned her whereabouts, and on promises never to repeat the various acts of unkindness and cruelty, and OVERTURES being made to the petitioner by him, that she returned, at his earnest
 3 request often repeated, to live with him, but that she remained for the period of about one month only when he renewed his cruel treatment of petitioner, and by frequenting the society of many fast women, not limiting it to white women, but that in the fall of 1895 petitioner caught the respondent in the act of flirting with a COLORED WOMAN and that they, the petitioner and respondent, FORTHWITH BROKE UP HOUSEKEEPING, AGREEING to SEPARATE and LIVE APART.

(NOTE.—The petitioner here offers to show at the taking of the proof in this case, the correspondence between the respondent and numerous women whose company he kept and on whom he spent his time and money to the exclusion of petitioner.)

That the petitioner left this city, and the respondent REMAINING AWAY about the period of TWO AND ONE-HALF YEARS. That during said period by her own industry, with her needle, petitioner earned her

own livelihood, until about February 1897 when the petitioner was again persuaded by the RESPONDENT, and upon his promises, notwithstanding the previous inhuman treatment of her, she hoping that reformation might take place in him, to TREAT HER BETTER she quieted her fears and ENDEAVORED to live with him, at No. 1410 PENNA. AVE., N. W., Washington, D. C., where the respondent furnished a flat for housekeeping. That they lived at this place until August — 1901, when the respondent, through acts of overbearing, threatening and violence toward petitioner, caused the petitioner to LEAVE HIS BED AND BOARD, she fearing a promise then made by him to THROW PETITIONER out of the window, saying to petitioner on August — 1901, that SHE “MUST GET OUT,” that “IF SHE DID NOT, BY 7:30 O’CLOCK THE NEXT MORNING, he (respondent) WOULD “PITCH HER OUT;” that he took HOLD OF HER BY FORCE, VIOLENTLY ASSAULTED, GRABBED AND BRUISED the WRIST of petitioner and with all manner of ABUSIVE TALK and SWEARING LOUDLY and EXCITEDLY.

That petition- again left him and established herself in Baltimore, Md. at dressmaking for a living and so supported herself.

That the petitioner was continually annoyed by the respondent during the time she was separated from him, and after remaining away ONE YEAR, she yielded to his PROMISES and PERSUASIONS to return to live with him in August 1902.

Since her return there has been NO PEACE OR SATISFACTION; two weeks after she returned he CRUELLY ASSAULTED her, ordered her TO GO, now almost daily threatens to PUT HER OUT OF THE HOUSE, taunts her, REFUSES TO FURTHER SUPPORT HER stating he is “going to MAKE HER LEAVE,” and on Nov. 7, 1904, threatened to put her out of doors, humiliating her in every conceivable manner; and the conduct of the respondent has caused the petitioner to become hysterical and very seriously impaired her health, necessitating the attendance of a physician upon her.

That the respondent, by his cruelties and threats to injure and destroy the petitioner if she filed a petition for divorce, has caused her health, which was always heretofore that of a ROBUST WOMAN, to become seriously impaired by the continual nagging, worrying and tormenting.

That respondent also visited upon petitioner great CRUELTY in MORTIFICATION AND CHAGRIN, by the cruel INFLECTION OF EPITHETS reflecting upon her MORALITY, so that with all of said acts of cruelty LIFE BECAME UNBEARABLE and ENDURANCE LONGER WAS NOT POSSIBLE and under fear of BODILY HARM and PERMANENT INJURY to her health she had to leave the respondent.

All of which acts of cruelty enumerated herein were inflicted upon her by the respondent, when there was no one present competent to testify thereto.

Seventh. That petitioner is ENTIRELY WITHOUT MEANS, being a poor person dependent upon her relatives or friends for support, and is

therefore unable to make the deposit required by the rules of the court, for filing this petition.

Eighth. That the respondent is employed in the United States Government, in the General Post Office Department, at a SALARY of \$1200.00 per annum; has NO ONE depending UPON HIM, except PETITIONER, who is entitled to such SUPPORT as to the court may seem just and proper.

The respondent hereto is JOHN HENRY LANE, 1410 Penn. Ave., N. W. Washington, D. C.

The premises considered the petitioner therefore prays:

First. The writ of subpoena may issue to the respondent requiring him to appear and answer the exigencies of this bill.

Second. That she may be granted by the decree of this honorable court, legal separation from the bed and board of respondent for cruelty to petitioner, and be authorized to live separate and apart from the respondent, without molestation by him, or annoyance from him.

Third. That a temporary restraining order or rule to show cause to that effect may be issued against him.

Fourth. That he may be decreed to PAY this petitioner
6 ALIMONY *pendente lite*, the cost of these proceedings, such
PERMANENT ALIMONY as, in consideration of all the facts in
this case to the court may seem just and proper, including her
COUNSEL FEES.

Fifth. That the petitioner may have such other and further relief as the nature of her case may require and to the court may seem proper.

EMMA E. LANE.

ROBERT E. L. WHITE,
Solicitor for Petitioner.

DISTRICT OF COLUMBIA, ss:

I, Emma Eudora Lane, do solemnly swear that I have read the foregoing petition by me signed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true and that the facts stated upon information and belief, I believe to be true.

EMMA E. LANE.

Sworn and subscribed to before me this 30th day of November, A. D. 1904.

[SEAL.]

M. A. SCHEELE,
Notary Public, D. C.

Endorsed: This petition may be filed without the usual security or deposit for costs. Thos. H. Anderson, justice.

7

Answer.

Filed December 19, 1904.

In the Supreme Court of the District of Columbia.

EMMA EUDORA LANE, Complainant,	} In Equity. No. 25065.
vs.	
JOHN HENRY LANE, Defendant.	

The defendant, in answer to the complainant's bill, respectfully shows:

1. That he admits the allegations set forth in paragraph first.
2. That he admits the allegations set forth in paragraph second.
3. That he admits the allegations set forth in paragraph third.
4. That he admits the allegations set forth in paragraph fourth.
5. That he admits that the complainant has conducted herself, to the best of his knowledge, as a dutiful wife, and it seems to this defendant to be a useless averment as such a thing has never been questioned.
6. That he denies that he ever visited upon the complainant, in the summer of 1895, a systematic course of cruelty, humiliation and abuse, which caused the complainant to leave this defendant; or that because of such treatment that she had to go to live with her brother in the city of Baltimore, Md.

That the allegation of his frequenting the society of "fast" women and flirting with a colored woman is certainly a creation of a diseased imagination, as this defendant not only is not aware of such incidents, but denies that such have ever occurred.

That the note inserted by the complainant in her bill concerning the correspondence, cannot be answered by the defendant, as he knows of no such correspondence in the possession of the complainant, and avers that should there be any letters that have passed years ago between himself and any lady friends of him, they have all truly been of an innocent nature, but, if the complainant has contrived to place upon them unreasonable and improper motives and suggestions, the co-habitation and happy relationship of a number of years have long since condoned any thoughtlessness that might have come to this defendant in such correspondence, which this defendant avers has not in any way produced any harm, or caused even the slightest idea of any unfaithfulness on the part of this defendant to the complainant.

That as to the absence set forth in one of the paragraphs, if such was the case it was prior to February, 1897, and with a full understanding and agreement between the complainant and the defendant, and such absence was not caused by any cruel treatment whatsoever on the part of the defendant to the complainant.

That he denies most positively that in August, 1901, that he was

overbearing and threatening, or ever used any violence toward the complainant, or that he ever took hold of her by force, or assaulted her in any manner whatsoever; and avers that the complainant has for some reason been of a very uncertain temperament, sometimes as loving, affectionate and tender as possible; sometimes cold and distant; sometimes very quiet and morose; and then in fits of passion and high temper she has been very quarrelsome, which conduct has been borne by the defendant with reasonable forbearance; and if he has said to her aught concerning her going, or spoken loudly, it must have been, to the best of the knowledge of this defendant, at such a time when reason had lost its power upon her, and there was no other way of bringing her to her senses than by speaking to her in an authoritative manner. That at no time when she has absented herself has it been caused by any cruel treatment on the part of this defendant, who has endeavored always to be kind to her.

That he denies that since August, 1902, to-wit, two weeks afterwards, that he cruelly assaulted the complainant, or that he ordered her to go, or that he threatened to put her out of the house, or that he refused her further support, or that he was going to make her leave; and on November 7, 1904, if he said that he would put her out, it was merely to cause her by such a threat to cease in her overbearing conduct, and in her use of harsh and unbearable language. That notwithstanding these allegations of what the defendant might have said, under such circumstances, there has been no act whatsoever that has brought to her any humiliation or embarrassment, or caused her any pain.

That he denies that by his cruelty and threats that the health of the complainant has been injured in any way whatsoever, because her own admission that she *was* a robust woman should have been in truth that she is still a robust woman.

10 That he denies most positively that he has ever visited upon the complainant such mortification and chagrin as is set forth in capital letters throughout her bill, or that he has been guilty of cruel infliction of epithets, or that he has ever said aught reflecting upon her morality; and avers that if life has become unbearable for her, it is tidings to him that are very surprising, and in the first instance come to him in the manner of a bill filed by the complainant.

That, on the other hand, he avers, that he has always been a good and kind husband to the complainant; that he has bestowed upon her every kind of an indulgence that his love and affection prompted; that he provides a home for her, well furnished; that there has always been a servant to be in attendance upon her, to do her bidding; that he has to the best of his ability surrounded her with all the comforts of home, and endeavored to make life to her as happy as possible; notwithstanding which, greatly, to *his* mortification and chagrin, she brings before the public such imaginary allegations as are set forth in the bill of complaint.

7. That he avers that if the complainant is entirely without means, it is surely a fault entirely her own.

8. That he admits that he is employed in the General Post Office Department at a salary of \$1200. per annum, out of which he has paid the rent of an apartment, in which they live, and furnished the same completely, and paid all of the expenses attendant upon the housekeeping, and in addition thereto has endeavored to clothe himself and the complainant.

11 And now having fully answered he begs to be dismissed with his proper costs.

JNO. H. LANE.

DISTRICT OF COLUMBIA, ss :

Personally appeared John Henry Lane, who on oath deposes and says: that he has read the foregoing answer by him subscribed; that he knows the contents thereof; that the facts set forth therein of his personal knowledge he knows to be true; that the facts set forth therein on information and belief he believes to be true.

JNO. H. LANE.

Subscribed and sworn to before me this 16th day of December, A. D., 1904.

EDWIN B. HAY, JR.

Notary Public.

[SEAL.]

Notice of Motion for Alimony, Counsel Fees, Affidavits, &c.

Filed January 27, 1905.

In the Supreme Court of the District of Columbia.

EMMA E. LANE, Petitioner,	} In Equity. No. 25065,
vs.	
JOHN H. LANE, Respondent.	} Doc. 56.

Now comes the petitioner in the above entitled cause, by Robert E. L. White, her solicitor, and moves the court, that the respondent, John H. Lane, be restrained and enjoined, by the order of this honorable court, from molesting and annoying the petitioner, Emma E. Lane, and that the said Lane, may be decreed to pay the petitioner a reasonable sum monthly for alimony *pendente lite*, and for

12 counsel fees as to the court may seem proper.

ROBT E. L. WHITE,

Solicitor for Complainant.

E. B. Hay, Esq., 14 & N. Y. Ave. N. W., Washington, D. C.:

Please take notice that on the 30th day of January A. D. 1905, at 10 o'clock a. m., or as soon, thereafter as counsel can be heard, I will call up the foregoing motion and move the court for the orders therein prayed.

This motion will be heard upon the papers and proceedings, heretofore filed, and had in this cause, and upon the affidavit of William Crawford, and Emma E. Lane, this day filed, copies of which are hereto attached.

ROBT E. L. WHITE,
Solicitor for Complainant.

13 DISTRICT OF COLUMBIA :

Emma E. Lane, being first duly sworn according to law deposes and says, that she is the petitioner in the above entitled cause, that she left the bed and board of the defendant as set out in the bill of complaint, herein, solely for the reason of the various acts of cruelty, long continued, which had been visited upon her by the respondent, so that life together had become totally unbearable.

She further says that the respondent has ever since she left him continuously sought her as she believes, for the purpose of injuring her. She is led to think so by the acts of the respondent.

That on January 1st, 1905, while affiant was on her way to church about 6.30 o'clock p. m., and almost at the church doors, she came across the respondent before she knew it, while in the company of friends and relatives, on the street.

That he showed at once, that he was highly enraged, and in a very loud voice upbraided affiant, whereby he attracted the attention of strangers, and demanded that she take this proceeding out court, saying that he would go to jail, and give up his position, and even swing on the gallows, before he would pay one cent of alimony to affiant.

14 That he abused every member of the affiant's family, and during all of said time (several minutes) the respondent remained standing with his hand resting in his hip pocket, as if to threaten the life of affiant with a revolver.

That affiant was, and now is, fearful of great danger and bodily harm, from respondent.

When affiant started to enter the church with the respondent, the respondent (Lane) got within the vestibule of the church, affiant seized the opportunity, when she was separated by the folding doors, and ran with all possible speed to a friend's house, nearby to get away from him, she believing that his intention was as shown by his acts, to harm her.

That affiant ran so quickly, and on account of the darkness, he was unable to learn in what direction affiant had escaped.

Affiant says she is afraid to go out in the street day or night, lest she will be molested, as he had often, theretofore threatened to do, as shown by the bill in the case.

Affiant further says, she is totally without means, further than what little she has been able to earn, at employment as cook, and housekeeper, and dressmaker for friends.

That because of respondent's cruelties toward affiant, as set out

in the bill herein, life with the respondent has become unbearable, and impossible to continue longer.

That respondent earns one hundred dollars per month (\$100.00) as set out in the bill herein.

15 Affiant says that on account of the threatening attitude of the respondent towards affiant that she has suffered intensely from fear of bodily harm, and been kept in a continued nervous condition necessitating the services of physician.

EMMA E. LANE.

Subscribed and sworn to before me this 27th day of January, A. D. 1905.

[NOTARIAL SEAL.]

IVAN HEIDEMAN,
Notary Public, D. C.

In the Supreme Court of the District of Columbia.

EMMA E. LANE	}	In Equity. No. 25065, Doc. 56.
vs.		
JOHN H. LANE.		

William Crawford, being first duly sworn according to law, deposes and says, in the above matter, that he is 52 years of age and acquainted with both of the parties to this cause, but has no interest therein.

That he resides at 121 S street, N. W. That on Jan. 1st 1905, he started to accompany Mrs. Emma E. Lane and several other ladies, including his daughter to church, about 6.15 o'clock, p. m., and when almost in front of the church doors at the corner of 1st and S streets, N.W., affiant's party was halted by a person who afterwards turned out to be the respondent in this case, who said in a very ugly, threatening manner, "I want to speak to you" approaching Mrs. Lane. He seemed unusually excited and demanded that she take her case out of court, continuing in the same tone.

16 That numbers of people were passing along on their way to church and Mrs. Lane on the respondent demanding in such loud and offensive manner that she take her case out of court, and other loud and boisterous expressions maligning her mother and other members of their family, Mrs. Lane then urged quietness and moderation of language and that they continue on to the church, they being then already near it.

That respondent said to Mrs. Lane that he would not pay her alimony and before he would let her or her people get money out of him that he would forfeit his position or go to jail—in the presence of affiant in a loud tone of voice attracting the attention of passersby, and that he would not do anything for her.

That the foregoing are some of the expressions which affiant heard. As they approached the church door (being within 8 or 10 feet

thereof) the respondent rushed by, (noticing she (Mrs. Lane) had gotten a few steps ahead, towards the church door) and he got in the vestibule ahead of Mrs. Lane, and the door closing she turned and made speedily for the home of a friend nearby, whom affiant knew also. That Mrs. Lane's escape was so sudden, and in the darkness, her whereabouts were unknown to him, Lane.

That said Lane finding Mrs. Lane had made her escape, began to address affiant, when affiant assured the said Lane that he, affiant, had nothing to do with the case and that affiant did not wish to be brought into it.

Affiant says that after the said Lane had indulged in his threats to go to jail—do time—lose his situation, all of which conversation and parts of conversation were in loud and insulting tones, 17 affiant remained in near distance to the parties because he feared that injury was meant to be inflicted upon Mrs. Lane and might be avoided by affiant's presence.

That affiant is informed and believes that respondent, Lane, is employed at \$100.00 per month, salary by U. S. Government in the Post Office Department.

Further deponent saith not.

WILLIAM CRAWFORD.

Subscribed and sworn to before me this 24th day January 1905.

[NOTARIAL SEAL.]

F. EDWARD MITCHELL,

Notary Public, D. C.

Order Allowing Alimony and Counsel Fees.

Filed January 31, 1905.

In the Supreme Court of the District of Columbia.

EMMA E. LANE	}	Equity. No. 25065.
vs.		
JOHN H. LANE.		

This cause coming on to be heard upon the motion of complainant for alimony and counsel fees, and being submitted to the court it is, by the court ordered this 31st day of January A. D. 1905, that the defendant pay to the complainant the sum of twenty-five dollars per month as alimony, the first payment to be made on the fourth day of February A. D. 1905 and each succeeding month on the fourth day of the month, until the further order of the court, and shall pay to the solicitor for the complainant the sum of twenty-five dollars as counsel fees, said sum to be paid within twenty 18 days from the signing of this order.

THOS. H. ANDERSON, *Justice.*

We consent to the above order.

E. B. HAY,

Sol'r for Def't.

ROB'T E. L. WHITE,

Sol'r for Petitioner.

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Petition for Rule to Show Cause, etc.

Filed August 5, 1905.

In the Supreme Court of the District of Columbia.

EMMA E. LANE, Petitioner,) In Equity. No. 25065,
vs.	
JOHN H. LANE, Respondent.) Doc. No. 56.

To the supreme court of the District of Columbia, holding an equity court:

The above named petitioner respectfully represents to the court as follows:—

1st. That on the 31st day of January, 1905, this honorable court ordered and adjudged that the respondent in this cause should pay to petitioner the sum of twenty-five (\$25.00) dollars monthly, as alimony *pendente lite*, the first payment to be made on the 4th of February, 1905.

2nd. That respondent was ordered, by this honorable court, to pay counsel fees in the sum of twenty-five (\$25.00) dollars, which said sums have been paid as ordered.

3rd. That petitioner was paid the alimony of \$25.00 for the months of April and May, but respondent has declined and refused to pay the amount of \$25.00 which came due on June 4th, and \$25.00 due on July and August 4th, 1905, a total of seventy-five (\$75.00) dollars, under the ruling of this honorable court, which he fails and refuses to pay, and declares he will not pay, as petitioner is advised.

20 4th. The petitioner is in very great need of said money and the failure of the respondent to pay the same, as ordered by this honorable court, has put her to great trouble and embarrassment; that she is utterly without means of support and is in destitute circumstances, as set out in the bill and affidavits filed in this cause.

5th. Petitioner further says, that respondent is living extravagantly, and is abundantly able to pay the sum decreed to be paid by the court, and she avers that the respondent is purposely refusing to carry out and obey the order of the court in order, thus, that the petitioner may be put to as much trouble and subjected to as much embarrassment as possible.

6th. She further represents that the respondent obtained an order of this court, upon the motion of his counsel, limiting the time in which the petitioner must take his testimony; that one session of testimony was had by the examiner, to-wit, April 7th, 1905, and that the examiner refused to take further testimony, until paid for the first session; that the said respondent has failed and refused to pay the examiner, and thus has prevented the petitioner from com-

pleting the testimony on her side. although the respondent receives from the U. S. Government a salary of one hundred (\$100.00) dollars per month, as set out in the petition, and is fully able to pay.

7th. That for and on account of the refusal of the respondent to comply with the order of the court, in this cause, his counsel, Henry E. Davis, Esq., as petitioner is informed, has withdrawn from the cause, as well his former counsel, E. B. Hay, Esq.

21 8th. Petitioner further represents: by the refusal of said respondent to pay said moneys which are long past due and been called for by petitioner's solicitor repeatedly, and are still unpaid, said respondent is in contempt of the order and decree of this court, as your petitioner believes and avers.

9th. Petitioner therefore prays that an order may be issued and served upon the respondent requiring him to appear and show cause why he should not be held in contempt of the court, and that he shall be required to pay the alimony now overdue, together with the fees of the examiner for past and arrange for future services of the examiner in this cause at once, and for such other and further relief in the premises as is just and equitable.

EMMA E. LANE.

ROB'T E. L. WHITE,
Solicitor for Petitioner.

DISTRICT OF COLUMBIA, ss:

I, Emma E. Lane, do solemnly swear that I have heard read the foregoing petition signed by me, and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts stated upon information and belief I believe to be true.

EMMA E. LANE.

Sworn and subscribed to before me this 4th day of August, A. D. 1905.

J. R. YOUNG,
By R. J. MEIGS, JR., *Ass't Cl'k.*

22

Rule to Show Cause.

Filed August 5, 1905.

In the Supreme Court of the District of Columbia.

EMMA E. LANE, Petitioner,	}	Equity. No. 25065, Doc. 56.
vs.		
JOHN H. LANE, Respondent.		

Upon consideration of the petition of the petitioner filed in this cause, it is this 5th day of August, A. D., 1905, ordered, by the

court, that the defendant John H. Lane, show cause on or before the 11th day of August, A. D. 1905, why he should not be adjudged in contempt for his refusal to obey the order of this court, passed in this cause on the 31st day of January, A. D., 1905, provided a copy hereof be served upon the said John H. Lane personally three (3) days before the said 11th day of August, A. D. 1905.

JOB BARNARD, *Justice*.

Marshal's Return.

Served a copy of the within order on defendant John H. Lane personally.

Aug. 5, 1905.

AULICK PALMER, *Marshal*.
H.

23

Return to Rule to Show Cause.

Filed August 11, 1905.

In the Supreme Court, District of Columbia.

EMMA EUDORA LANE	} Equity. 25065.
vs.	
JOHN HENRY LANE.	

The defendant, for return to the rule to show cause, issued herein on the 5th day of August, 1905, says:

First. He on his oath declares that he has never refused or wilfully failed to comply with any order of this honorable court, but as far as it was within his power he has rendered due obedience to the same.

Second. The defendant denies that he is living extravagantly, and that he has purposely refused to comply with the order of the court, that he might embarrass the petitioner, and on the contrary he alleges, that since she wilfully deserted and abandoned him on the 1st day of December 1904, he has practiced severe economy in his living the same having been rendered necessary by the generous bounty that he had for twenty years, lavished upon the petitioner, paying the large bills that she contracted, for fine clothing, some of which he has paid since her last desertion of him, bestowing upon her costly jewelry, and diamonds that she craved and still wore when she last abandoned his home, without any just cause or excuse, and the petitioner well knows, that the defendant's household furniture was then burdened with a deed of trust, as it is now, and that all

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his savings had been exhausted, although he ever maintained her in comfort, and even in luxury far beyond her station in

life, and since the commencement of her most unjustifiable suit against him, he has had to apply a large portion of his moderate salary to the payment of counsel fees both to her counsel and his own, his defence against her most false and defamatory charges entailing the necessity upon him of anticipating his salary by borrowing money, and the petitioner further well knows, that last year his health failed for the first time during his twenty two years of married life and he was obliged to employ a specialist and enter a sanitarium in the mountains for treatment, for a month, while at the same time paying her expenses for the same period at a summer resort.

Third. The defendant admits that the examiner has held but one session to take the testimony in the cause and that the petitioner alone testified at that, on April 7th, 1905, and that he refused to pay the bill of the examiner for taking such testimony, the facts in the premises being as follows: 'The taking of petitioner's testimony occupied about forty five minutes, and although it covered every allegation contained in her original petition, her solicitor stated that she had not closed her testimony. That about six weeks thereafter defendant attended at the office of petitioner's solicitor having been informed by the examiner that she would resume the taking of the testimony and he went there on the day named by her. The petitioner's solicitor (Mr. White) had previously notified defendant by letter, that the examiner had refused to take further testimony,

25 unless she were paid for what had been taken, but on her arrival at the office she said to petitioner's solicitor that she had not refused to take further testimony as he had stated but that she had then decided that she would not, unless defendant paid her \$12.50, for what she had already taken; and defendant thereupon protested against such a course as unusual, and also insulting to him; that he was entirely responsible, and would pay the proper charge for the testimony when it was completed but objected to paying at the end of each session unless the court ordered him to do so, and said that he was anxious that the testimony should be taken; that it was on his motion that the case was referred to an examiner, that it be proved that his wife had no evidence to support the suit that she had brought against him.

Fourth. The defendant denies that the petitioner is in destitute circumstances, or in need of his support which she has voluntarily renounced, and thereby broken up his home, for as defendant is informed and believes, and so alleges, she has rented a house, which she has comfortably furnished, and there has a dress maker's establishment, with a good patronage, with her mother assisting her and also a gentleman boarder.

Fifth. And defendant in proof of petitioner's reckless disregard of veracity in this cause, and of her extraordinary duplicity, begs leave to call the attention of the court to the fact that on the day she deserted him, she was living with him on terms of amity and apparent affection; she addressed him in words of endearment as

they parted on said day, December 1st, 1905, after they had taken lunch together, he leaving her to return to his office, and on coming home at about 5 p. m. he learned that she had abandoned him, taking with her a sewing machine for which he had paid \$55.00 and some valuable household effects without assigning any reason for her departure; and yet on the previous day, to wit, November 30, 1905, she had retained counsel, and signed and verified her petition in which she alleged, unknown to defendant, that she had left him, being driven from his home by his cruelty.

Fifth. The defendant further alleges that since the petitioner's unwarranted desertion of him, he has repeatedly offered to take her back to his home, in the hope that she would become a dutiful wife to him, when removed from the vicious influence of certain near relatives of hers who had long fed on his bounty, promising most solemnly that he would treat her as he had always done with kindness and affectionate consideration, furnishing her a comfortable home, but she has refused with bitter words of vituperation all his offers of reconciliation, which defendant is ready to renew in open court.

Sixth. The defendant further alleges that he is absolutely unable to pay the arrear of alimony demanded of him; that after paying what is due to his creditors on his just debts from month to month, he has not sufficient to maintain two separate homes.

JNO. HENRY LANE.

Sworn to and subscribed before me this 10th day of August 1905.

RAYMOND B. DICKEY,

[NOTARIAL SEAL.]

Notary Public, D. C.

27 *Order Adjudging Defendant in Contempt of Court.*

Filed August 15, 1905.

In the Supreme Court of the District of Columbia.

EMMA E. LANE	}	Eq. No. 25065.
vs.		
JOHN H. LANE.		

This cause coming on to be heard upon a rule to show cause why the defendant should not be adjudged in contempt of court for his refusal to obey the order of this court passed on the 31st day of January 1905, and the return made thereto by the defendant, and being argued by counsel, and considered by the court: It is this 15th day of August 1905 ordered by the court that the defendant John H. Lane be and he is hereby adjudged in contempt of court for his refusal to obey the order of this court: And it is further ordered by the court that the defendant be allowed five (5) days from the date

of this order, to pay to the complainant Emma E. Lane or her solicitor the sum of seventy-five — (\$75.00) alimony due under the order of this court, and in default of such compliance with this order, the said defendant shall be taken and placed in the custody of the United States marshal of the District of Columbia and held by him until the further order of this court, or until the said sum is paid.

JOB BARNARD, *Justice.*

28

Order for Entry of Appeal and Citation.

Filed August 16, 1905.

In the Supreme Court of the District of Columbia, the Sixteenth Day of August, 1905.

EMMA EUDORA LANE	}	Equity. 25065.
vs.		
JOHN HENRY LANE.		

The clerk of said court will please enter an appeal in behalf of the defendant, in the above entitled cause, from the order of the court dated August 15, 1905, adjudging him in contempt for his failure to pay the arrear of alimony *pendente lite*, alleged to be due therein, and issue citation to the petitioner.

THOS. J. MACKEY,
Sol'r for Defendant.

29

In the Supreme Court of the District of Columbia.

EMMA EUDORA LANE	}	No. 25065. In Equity.
vs.		
JOHN HENRY LANE.		

The President of the United States to Emma Eudora Lane,
Greeting :

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein, under and as directed by the rules of said court, pursuant to an appeal from order of the supreme court of the District of Columbia, on the 15th day of August, 1905, wherein John Henry Lane is appellant, and you are appellee, to show cause, if any there be, why the judgment—decree—rendered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Harry M. Clabaugh, chief justice of the

supreme court of the District of Columbia, this 16th day of August, in the year of our Lord one thousand nine hundred and five.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk*,
By R. J. MEIGS, JR.,
Ass't Cl'k.

Service of the above citation accepted this 17 day of August, 1905.

ROB'T E. L. WHITE,
Attorney for Appellee.

[Endorsed:] No. 25,065 Equity. Docket 56 Emma E. Lane vs. John Henry Lane Citation. Issued August 16, 1905 Ret. August 17 1905 Service accepted Thomas J. Mackey, attorney for appellant.

30 *Order Affixing Appeal Bond.*

Filed August 18, 1905.

In the Supreme Court, District of Columbia.

EMMA EURORA LANE	}	Equity. 25065, Doc. 56.
vs.		
JOHN HENRY LANE.		

It appearing that the defendant has noted an appeal in the above entitled cause, and that a citation has been duly issued and served on the petitioner therein, it is on this 18th day of August, 1905, ordered, that the bond on such appeal be and the same is hereby fixed at twenty dollars, with one good and sufficient surety; or the defendant in lieu of such bond may deposit twenty dollars with the clerk of the court.

WENDELL P. STAFFORD, *Justice.*

Memorandum.

August 18, 1905.—Appeal bond filed.

31 *Order for Transcript of Record for Court of Appeals.*

Filed September 8, 1905.

In the Supreme Court of the District of Columbia, the 8th Day of September, 1905.

EMMA EUDORA LANE	}	Equity. 25065.
vs.		
JOHN HENRY LANE.		

The clerk of said court will please prepare record for Court of Appeals to include the following:

Original petition filed December 2d 1904.

Answer of defendant filed Dec. 19th, 1904.

Notice of motion for alimony *pendente lite* and counsel fees and affidavits of Wm. Crawford and complainant, filed Jan'ry 27, 1905.

Order granting alimony *pendente lite* and counsel fees Jan'ry 31, 1905.

Rule to show cause August 5, 1905.

Return to rule filed August 11, 1905.

Order August 15, 1905, adjudging defendant in contempt of court and requiring him to pay the arrear of alimony.

Request to clerk to enter appeal in behalf of defendant from the order of August 15, 1905, and issue citation to complainant, filed August 16th, 1905, and the citation issued Aug. 16, 1905, and order fixing bond on appeal, filed Aug. 18, 1905.

THOS. J. MACKEY,
Sol'r for Defendant.

32 *Order for Additional Papers for Transcript of Record.*

Filed September 13, 1905.

In the Supreme Court of the District of Columbia.

EMMA E. LANE	}	Eq. No. 25065.
vs.		
JOHN H. LANE.		

The clerk of the court will please prepare for record for the Court of Appeals, the petition of the complainant for rule to show cause &c. filed on the 15th day of August 1905, and the order adjudging defendant in contempt of court, passed on the 15th day of August 1905. These in addition to papers requested by attorney for the appellant.

R. E. L. WHITE,
JNO. E. McNALLY,
Att'ys for Appellee.

33 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, }
District of Columbia, } ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 32, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made a part of this transcript, in cause No. 25065 in equity, wherein Emma Eudora Lane, is petitioner, and John Henry Lane, is respondent, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe
Seal Supreme Court my name and affix the seal of said court, at
of the District of the city of Washington, in said District, this
Columbia. 29th day of September, A. D. 1905.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1614. John Henry Lane, appellant, vs. Emma Eudora Lane. Court of Appeals, District of Columbia. Filed Sep. 30, 1905. Henry W. Hodges, clerk.

the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

JANUARY TERM, 1906.

No. 1614.

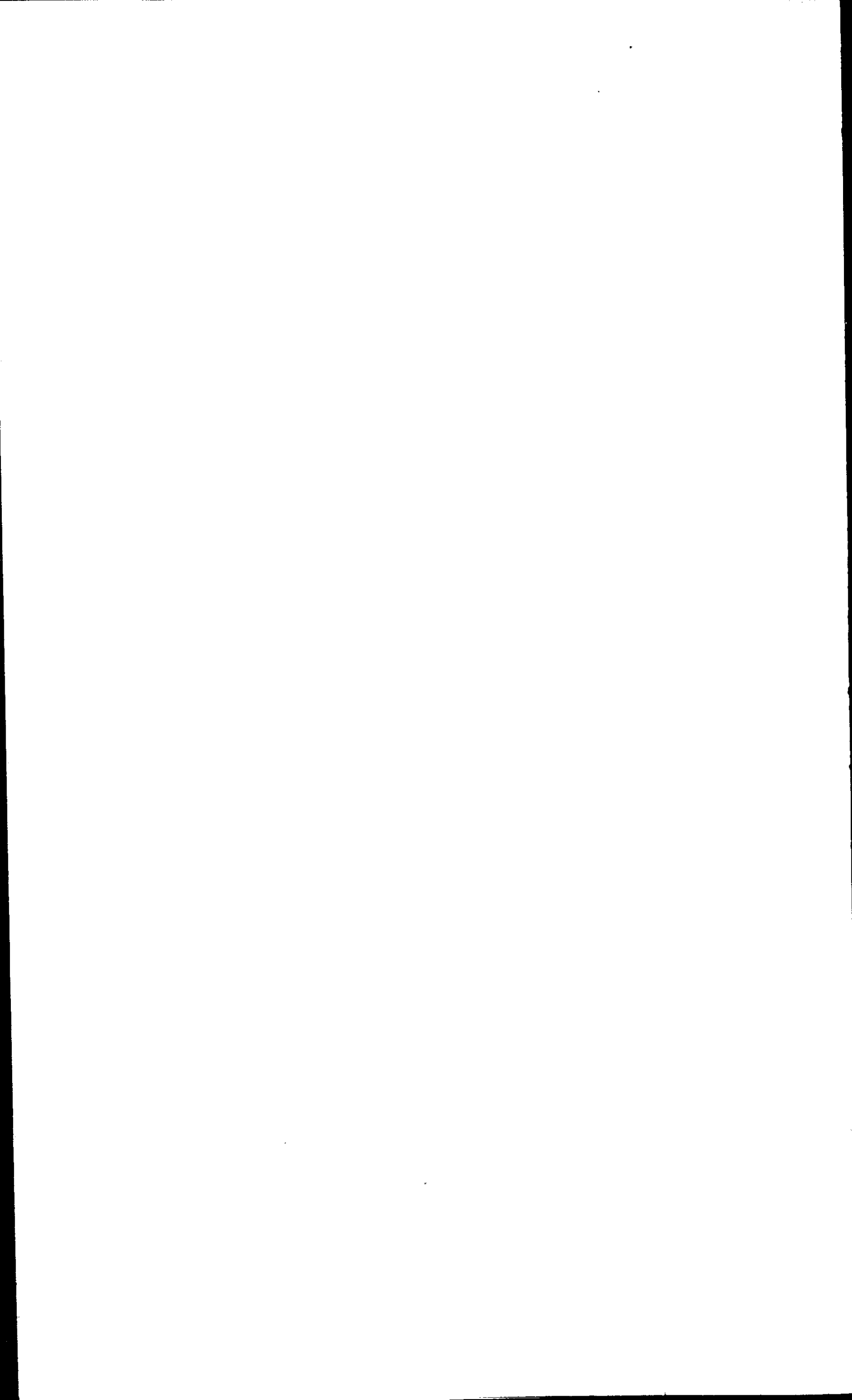
JOHN HENRY LANE, APPELLANT,

vs.

EMMA EUDORA LANE, APPELLEE.

BRIEF OF APPELLANT.

T. J. MACKEY
Attorney for Appellant



In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

JOHN HENRY LANE, APPELLANT,
vs.
EMMA EUDORA LANE. } No. 1614.

SUPREME COURT OF THE DISTRICT OF COLUMBIA.
EMMA EUDORA LANE, PETITIONER,
vs.
JOHN HENRY LANE, RESPONDENT. } In Equity, 25,065.

BRIEF OF APPELLANT.

Statement of Case.

This is an appeal from an order of the Supreme Court of the District of Columbia in an equity cause, viz, a suit for limited divorce.

December 2, 1904, the appellee filed her petition praying for a divorce a mensa et thoro, and permanent alimony.

January 27, 1905, the appellee filed a motion for alimony pendente lite and counsel fees.

January 31, 1905, motion was granted by consent of the solicitor for the appellant.

August 5, 1905, the appellee filed a petition for a rule

requiring the appellant to show cause why he should not be adjudged in contempt of court for his failure to pay the alimony pendente lite then in arrear.

August 11, 1905, appellant filed his return to the rule to show cause.

August 15, 1905, the presiding justice passed an order, after a hearing upon the rule, adjudging the appellant in contempt for his failure to obey the order of the court, passed January 31, 1905, and allowing him five days to pay the sum due under such order (\$75.00), and in default of payment that he be placed in the custody of the United States Marshal, and held by him until the further order of the court, or until the said sum is paid.

From this last-named order the present appeal has been entered and perfected.

Assignments of Error.

The court below erred—

1. In holding that the allegations of appellee's petition were sufficient on which to base a decree for a divorce a mensa et thoro, if taken as true, and that even if such petition was demurrable, the order of January 31, 1905, having been passed by consent of appellant's solicitor, must be enforced.

2. In holding that affidavits filed by the appellee, *de hors* her original petition, should be considered as supporting her claim for alimony pendente lite set forth therein.

3. In holding that the pleadings formed a sufficient basis for the order granting the appellee alimony pendente lite.

4. In holding that appellant's return to the rule to show cause, supported as it was by what appears in the pleadings, was not sufficient to warrant the discharge of the rule.

Argument and Authorities.

The assignments of error herein are designed to present for the consideration of the court the following contentions on behalf of the appellant:

First. The appellee's petition alleges (paragraph 3) that she and appellant were married on August 23, 1883, but fails to allege that such marriage was subsisting at the date of her petition.

It requires no citation of authorities to show that such allegation is jurisdictional, as much so as the allegation of the marriage itself, and its omission stamped the petition as clearly demurrable on that ground alone.

Second. The appellee next alleges in the petition (paragraph 6) that in the summer of 1895 she left the appellant's bed and board because of appellant's "continuing cruelty and inhumanity, entirely without provocation on her part, which acts were followed by vituperation and threats." The allegation of cruelty and inhumanity is a mere proposition of law, and the petition does not set forth any fact to support such allegation or state what the utterances of the appellant were, constituting the alleged vituperation and threats.

Third. In the same paragraph the appellee alleges that she returned to the home of the appellant after an absence of about six weeks upon his promise not to repeat the said unspecified acts of "unkindness and cruelty," but that she remained with him about one month only because he renewed his "cruel treatment of her."

She again fails to state the facts constituting "cruelty," and the only allegations of fact that she makes in said paragraph as to the conduct of appellant is that he frequented the society of fast women, not averring that he knew them to be fast women, or in any way indicating her definition of the term fast as applied to a woman, but alleges as the appellant's crowning

iniquity the unforgivable sin for which she decided to live separate and apart from him forever, and because of which, on her demand, they agreed to break up their home; that in the fall of 1895 (twelve years after their marriage), she "caught him in the act of flirting with a colored woman," a clear case of "drawing the color line" on "flirting," which might have been more or less reprehensible on the part of the husband according to the shade of color, in the eyes of the appellee, but not a sufficient ground in law to warrant her abandonment of his home.

She thereupon left him, as she states in said paragraph, remaining away about two and one-half years, when she again returned to him on his promise "to treat her better," thus ending the period of her second (2d) desertion of him. The appellee then proceeds to allege in the same paragraph (6) of her petition, that they lived together from about February, 1897, until August, 1901, over four years, when she was again compelled to "leave his bed and board," she fearing a promise then made by him to throw petitioner (the appellee) out of the window."

She fails to state, however, what consideration, if any, she gave the appellant for such promise, which it plainly appears he did not keep, but instead of so doing she alleges that he said to her on August —, 1901, that "she must get out;" that if she did not by 7.30 o'clock the next morning, he would "pitch her out;" that he took hold of her by force, and violently assaulted, grabbed, and bruised the wrist of her right hand, with abusive talk and swearing."

She fails to state how long after such threats and conduct she continued to share appellant's bed and board, but alleges that she again left him (her third desertion) and went to Baltimore.

The mere seizing of her wrist indicates not assault, but restraint exercised by him, when, as he alleges in his answer, she was in one of her "fits of passion and

high temper," and "when reason had lost its power upon her and there was no other way of bringing her to her senses."

This third desertion terminated after one year, to wit, in August, 1902, as alleged in said paragraph, and she again returned to appellant's home, and she further alleges therein that since her return there has been no peace or satisfaction, and two weeks after her return he cruelly assaulted her, and ordered her to go, and "*now almost daily threatens to put her out of the house, taunts her, refuses to further support her, stating he is going to make her leave,*" and on November 7, 1904, threatened to put her out of doors.

She adds that for the causes recited and the fear of bodily harm and permanent injury to her health, she again had to leave the respondent (appellant).

It is significant that the appellee does not state when she made her last departure from the appellant's home—a most essential averment; and her failure to state it supports the allegation in his return to the rule to show cause that on the day she verified her petition (November 30, *Dec 1,* 1904) she was living with him on terms of amity and apparent affection. It is further supported by the fact that she uses the present tense in reference to his threats in her allegations above cited, in which she says he "*now almost daily threatens to put her out of the house, taunts her, and refuses to further support her*"—a most flagrant instance of unparalleled duplicity, which would fully warrant the court in according no credence to her charges; and of vital import, in view of her statement in her petition that all her allegations of cruelty rest upon her credibility alone, she alleging that the acts of cruelty enumerated by her "were inflicted upon her by the respondent (appellant) when there was no one present competent to testify thereto."

None of the threats or acts alleged by the appellee con-

stitute a sufficient ground for her abandonment of her home. Even where a husband threatened to cut his wife's throat, without any actual attempt to execute the threat, or actual violence, it was held not sufficient ground for a divorce.

Wait's Actions and Defences, 2 vol., 569.

Alimony pendente lite will not be granted if the wife does not show a sufficient cause for divorce in her bill, or if the bill is demurrable.

Rose vs. Rose, 11 Paige (New York), 166.

It is, therefore, respectfully submitted that the lower court erred in passing the order of August 15, 1905, and that the same should be overruled.

T. J. MACKEY,
Attorney for Appellant.

February 13, 1906.

COURT OF APPEALS,
DISTRICT OF COLUMBIA,
FILED

FEB 12 1906

Henry W. Hodges,
Clerk.

IN THE
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

JOHN HENRY LANE, Appellant, }
vs. } No. 1614.
EMMA E. LANE, Appellee. }

BRIEF FOR APPELLEE.

JNO. E. McNALLY,
For Appellee.

GILES & COLE, Printers, 317 Sixth St. N. W.

IN THE
COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

JOHN H. LANE, Appellant,
vs.
EMMA E. LANE, Appellee. } No. 1614.

Statement of the Case.

The Bill was filed in case on the 2nd day of December, 1904, asking for a legal separation from the bed and board of respondent for cruelty to the petitioner, appellee. The answer was filed on December 19th, 1904.

On January 27th, 1905, a motion was filed by petitioner asking for alimony *pendente lite* and for counsel fees. On the 31st January, 1905, an order was passed by the court allowing the petitioner twenty-five dollars per month, as alimony and the sum of twenty-five dollars as counsel fees. This order was by consent. (Rec. p. 10.)

There were two payments made by the defendant, appellant, under this order, and he declining and refusing to pay any further money as alimony petitioner, appellee, filed a petition asking for a rule to show cause why he should not be adjudged in contempt for his refusal to obey

the order passed on the 31st day of January, 1905, the rule was ordered by the court to issue and made returnable on the 11th day of August, 1905.

On the 11th day of August, 1905, the court passed an order by which the defendant, appellant, was adjudged in contempt of court for his refusal to obey the order of the court, and it was further ordered by the court that the defendant be allowed five days from the date of the order, to pay to the complainant, appellee, the sum of seventy-five dollars, alimony due under the order of the court, and in default of said compliance with this order, the said defendant, appellant, be taken and placed in the custody of the United States Marshal of the District of Columbia, and held by him until the further order of the court, or until the said sum was paid. (Rec. pp. 15, 16.)

On the 16th of August, 1905, the defendant, appellant, entered an appeal from said order dated August 15th, 1905, adjudging him in contempt.

BRIEF.

This court in the case of Tolman v. Leonard 6 App. D. C., 224, decided that the court below had the power to compel obedience to its decrees awarding alimony.

It is not denied by the appellant that he is receiving as a clerk in the employ of the United States the sum of \$100 per month and has no one with whose support he is lawfully chargeable, and the court say in the case cited, "To deny the right to coerce him into performance is to deny all right of redress to the wite. Why go through the idle ceremony of ordering payments if, with ample means at his command, he may treat the orders with contemptuous defiance."

The order in this case from which the appeal is taken recites that he is adjudged in contempt for his refusal to obey the order of the court, passed on the 31st day of January, 1905, and giving him five days to pay to the complainant the sum of \$75 *alimony due under that order* and upon default, to be taken and placed in the custody of the United States Marshal and held by him until the further order of the court, *or until the said sum is paid*.

There is no question as to the ability of the appellant to pay alimony as ordered. The order of commitment shows the ground upon which it rests. It shows plainly that the commitment was had for disobedience of the order to pay alimony. *Tolman v. Leonard* 6 App. D. C., 236.

The order was by consent, and two payments were made by the appellant.

It is a rule of law too well settled to need the citation of authority that an order entered by consent is not appealable.

Bolles v. Cantor 6 N. Y., App. Div. 365.

In *Henry v. Hilliard* 120 N. Car., 484, the court say: It would be utterly destructive of all our ideas of the verity of records if they could be destroyed by some one coming in after court and saying that he did not agree that such an order should be made, although his attorney did. This court in the case of *Sparks v. Sparks*, decided April 4th, 1905, say: "The rule is well settled that a court is not guilty of a gross abuse of discretion in awarding alimony and counsel fee to a wife, without passing upon the merits of the case, where she is without separate means, and the husband is able to support her. Facts sufficient to justify the court below in awarding alimony were not seriously controverted. The marriage was not

denied, the wife was as stated" without any visible or other means of support, "the husband was in receipt of a fair salary and the parties were admittedly living apart."

It is submitted that the order appealed from was right and just and should be affirmed.

JOHN E. McNALLY,
For Appellee.

